

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3 FAIR ISAAC CORPORATION, Court File No.
16-cv-1054 (WMS/DTS)

4 PLAINTIFF,

5 VS.

6 FEDERAL INSURANCE COMPANY
and ACE AMERICAN INSURANCE
7 COMPANY,

8 DEFENDANTS.
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13 VIDEOTAPED DEPOSITION OF
14 BROOKS HILLIARD
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EXHIBIT

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25 Taken June 19, 2019

By Brandi Bigalke, RPR

<p>1 worldwide -- worldwide was removed from the Blaze 2 license; is that right? 3 A. At the top of the page, I reference 4 a June 26 draft where the United States of 5 America was lined through and worldwide was 6 substituted. 7 And then in the following paragraph 8 I reference a June 27 draft which changes that 9 section to read, "territory with respect to the 10 installation and physical location of the Fair 11 Isaac products means the United States." 12 So a change from territory means 13 worldwide in the June 26, to territory with 14 respect to the installation and physical location 15 means the United States of America in the 16 June 27th. 17 Is that what you're asking about? 18 Q. Let me show you what's previously 19 been marked as Exhibit 312. Have you reviewed 20 this e-mail and this draft of the software 21 license agreement before? 22 A. This is an exhibit to -- whose 23 deposition is this an exhibit to? 24 Q. This is an e-mail from Jandeen 25 Boone, the same person you referenced.</p> <p style="text-align: right;">Page 149</p>	<p>1 term territory, which limits the installation and 2 physical location. 3 But taking it out of Section 2.1 4 doesn't necessarily restrict usage with the 5 same -- at least as I understand it, and I'm not 6 a lawyer. 7 But looking at it from what would 8 be my view and what I believe is normal and 9 customary, that taking it out of here would open 10 usage outside of the territory, where the 11 territory limits installation and physical 12 location. 13 Q. So you're interpreting the 14 contract? 15 A. I'm giving you my understanding of 16 what would be a normal and customary 17 understanding in the industry of what industry 18 people would look at this contract and understand 19 from it. 20 Q. So are you familiar with other FICO 21 Blaze software agreements that actually have a 22 reference to the territory in the license grant 23 section? 24 A. In the two weeks that I had to do 25 this report, I don't recall whether I saw any</p> <p style="text-align: right;">Page 151</p>
<p>1 MR. HINDERAKER: He was asking if 2 you know whose deposition this was an exhibit to. 3 MR. FLEMING: Well, I mean, it says 4 Boone deposition at the bottom of the tab -- 5 THE WITNESS: Then I have seen it 6 because -- 7 MR. FLEMING: -- I'm assuming that 8 was -- 9 THE WITNESS: -- I looked at the 10 exhibits to the Boone deposition. 11 BY MR. FLEMING: 12 Q. Okay. And do you see where on this 13 draft under the license grant, the phrase in 14 Section 2.1, "but only within the territory and" 15 is redlined out? 16 A. I see that. 17 Q. What is your understanding as to 18 why the parties would agree to remove territory 19 from the license grant if, as you say, they meant 20 to incorporate this term into the section? 21 A. The license grant says "subject to 22 the terms, conditions and limitations of this 23 agreement," and up above it says the following 24 terms of which territory is one, so the License 25 Grant 2.1 is subject to the terms including the</p> <p style="text-align: right;">Page 150</p>	<p>1 other such agreements. I may have, but I don't 2 recall having seen any other such agreements. 3 Q. Okay. So you've referenced a 4 couple of times short time period you had between 5 receiving the report and writing the report. 6 Are you saying that because that 7 posed some obstacles to you in providing the 8 report that you wanted to prepare and provide? 9 A. No. What I'm saying is from the 10 date when Dr. Kursh and Mr. McCarter's reports 11 that I was rebutting became available until the 12 date when my report was due, I had a limited 13 period of time. 14 I focused my time on the subject of 15 my opinions that are stated Opinions 1 through 5. 16 I didn't necessarily look at issues that did not 17 seem to me -- such as license agreements with 18 other FICO licensees, that didn't seem to be -- 19 to me to be relevant to rebutting Dr. Kursh's 20 opinions. 21 Q. Well, let's look at Dr. Kursh's 22 report on page 23, if you could. 23 A. I don't believe -- oh. 24 MR. HINDERAKER: Yeah, it's one -- 25 THE WITNESS: 501? Is it 501?</p> <p style="text-align: right;">Page 152</p>